

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RYAN HELMOLD,

Defendant-Appellee.

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UNPUBLISHED

April 15, 2014

No. 311464

St. Clair Circuit Court

LC No. 11-002266-AR

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

The prosecution appeals by leave granted<sup>1</sup> the circuit court's order reversing defendant's conviction of reckless driving and remanding for a new trial. We affirm.

Defendant's conviction arose out of a February 22, 2011, automobile accident in which Katrina Dawson, the driver of the other automobile involved, died. The accident occurred on Wildcat Road in St. Clair County while defendant was driving northbound and Dawson was traveling southbound. Emergency responders described the conditions on Wildcat and surrounding roads that evening as snow-covered, icy, slippery, and "treacherous." Shortly before Dawson and defendant met each other, Dawson lost control of her automobile and spun sideways into defendant's lane. Defendant's pickup truck struck Dawson's automobile on the passenger side. Defendant's truck propelled Dawson's automobile approximately 130 feet from the initial point of impact, and became embedded in Dawson's automobile. During the crash, Dawson was forced out of the driver's side window, and she died at the scene of the accident.

The speed limit on the stretch of Wildcat Road where the accident occurred was 55 miles per hour (mph). Sergeant Timothy Brown, an accident reconstructionist with the Michigan State Police, testified that Dawson was traveling 47 mph five seconds before the crash. Testimony differed with regard to defendant's speed at the time of the accident. Using the accelerometer or "black box" data from defendant's automobile, Brown testified that defendant was traveling 68 mph five seconds before the crash, and that one second before the crash, defendant was traveling

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<sup>1</sup> *People v Helmold*, unpublished order of the Court of Appeals, entered June 20, 2013 (Docket No. 311464).

65 mph. Meanwhile, Deputy Russell Nowiski, an accident reconstructionist with the St. Clair County Sheriff's Office, estimated that defendant was traveling between 55 and 68 mph before the crash. At the scene, defendant reportedly told police officers that he was traveling approximately 52 to 55 mph at the time of the accident.

During its case-in-chief, the prosecution admitted several photographs that depicted the accident. One of the photographs, People's Exhibit 9, is the subject of this appeal. This photograph showed the driver's side of Dawson's automobile, and it showed that defendant's truck was embedded into the passenger side of Dawson's automobile, although the extent to which the truck was embedded in Dawson's automobile was not entirely clear from the photograph. In the foreground, the photograph depicted Dawson's limp, lifeless body hanging from the driver's side window of the automobile. Beneath Dawson's body, the photograph shows a bloodstained door and blood that dripped onto the snow-covered ground.

Before trial commenced, defendant objected to the admissibility of People's Exhibit 9, but the district court overruled his objection. On appeal to the circuit court, defendant argued that People's Exhibit 9 was irrelevant, unfairly prejudicial, and that the admission of the photograph at trial was outcome determinative.<sup>2</sup> The circuit court agreed and reversed defendant's conviction.

On appeal from that decision, the prosecutor argues that the circuit court failed to apply the correct standard of review, that the circuit court abused its discretion in determining that the photograph was irrelevant and unfairly prejudicial, and that the circuit court erred when it reversed defendant's conviction. "The determination of what standard of review applies to a certain situation is a question of law. Questions of law are reviewed de novo." *People v Walters*, 266 Mich App 341, 352; 700 NW2d 424 (2005). With regard to the evidentiary issue, "[p]reserved evidentiary rulings are reviewed for an abuse of discretion." *People v Unger*, 278 Mich App 210, 216; 749 NW2d 272 (2008). "When the decision regarding the admission of evidence involves a preliminary question of law, such as whether a statute or rule of evidence precludes admissibility of the evidence, the issue is reviewed de novo." *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003). An appellate court will not reverse a conviction because of a trial court's evidentiary ruling unless "it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

As an initial matter, the circuit court did not err by failing to mention the applicable standard of review when it analyzed the district court's evidentiary ruling. Although the circuit court failed to articulate a standard of review, a judge is presumed to know and understand the law. See, e.g., *People v Sherman-Huffman*, 466 Mich 39, 43; 642 NW2d 339 (2002). And, there is no indication from the record that the circuit court applied an incorrect standard. Thus, we find no error with regard to the circuit court's application of the standard of review.

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<sup>2</sup> Defendant also challenged the great weight of the evidence, the sufficiency of the evidence, and the failure to grant the sequestration of witnesses. The circuit court rejected those challenges, and they are not at issue in this appeal.

However, we disagree with the circuit court's conclusion that People's Exhibit 9 was irrelevant. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. "Alternatively stated, the general rule is that evidence is admissible if helpful in throwing light upon any material point in issue." *People v Murphy (On Remand)*, 282 Mich App 571, 580; 766 NW2d 303 (2009) (quotation omitted).

Defendant was charged with reckless driving, which requires proof that defendant drove with "willful or wanton disregard for the safety of persons or property . . . ." MCL 257.626(2). Wanton behavior is behavior that exhibits a disregard or indifference toward the consequences of one's actions. See *Jennings v Southwood*, 446 Mich 125, 140-141; 521 NW2d 230 (1994). We conclude that People's Exhibit 9 meets the minimum threshold for relevancy. The prosecution's theory of the case was that the damage caused to Dawson's automobile demonstrated that defendant drove with no regard for the consequences of his actions. People's Exhibit 9 shows the damage to Dawson's automobile, with defendant's truck seemingly embedded in the opposite side of Dawson's vehicle. The extensive damage to the automobile could be relevant to show that defendant drove in such a manner that he disregarded the consequences of his actions. See *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001).

However, the relevancy of People's Exhibit 9 does not end our inquiry. *People v Mills*, 450 Mich 61, 76; 537 NW2d 909 (1995), modified in part on other grounds 450 Mich 1212 (1995) ("The proper inquiry is always whether the probative value of the photographs is substantially outweighed by unfair prejudice."). MRE 403 provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). "[U]nfair prejudice refers to the tendency of the proposed evidence to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock." *People v McGhee*, 268 Mich App 600, 614; 709 NW2d 595 (2005) (quotation omitted). An analysis under MRE 403 requires balancing several factors, including "whether the fact can be proved in another manner without as many harmful collateral effects." *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008).

This Court has held that a photograph need not be excluded simply because it is gruesome. See, e.g., *Unger*, 278 Mich App at 257. "However, the trial court should exclude those [photographs] that could lead the jury to abdicate its truth-finding function and convict on passion alone." *People v Anderson*, 209 Mich App 527, 536; 531 NW2d 780 (1995). As explained by our Supreme Court in *Mills*, 450 Mich at 77 (quotations and citations omitted):

Photographs that are merely calculated to arouse the sympathies or prejudices of the jury are properly excluded, particularly if they are not substantially necessary or instructive to show material facts or conditions. If photographs which disclose the gruesome aspects of an accident or a crime are not pertinent, relevant, competent, or material on any issue in the case and serve

the purpose solely of inflaming the minds of the jurors and prejudicing them against the accused, they should not be admitted in evidence.

The circuit court appropriately held that the probative value of People's Exhibit 9 was substantially outweighed by the danger of unfair prejudice. *Id.* The photograph is only marginally probative. It was taken of the opposite side from where the crash occurred, and it is difficult to see defendant's truck in the photograph. Additionally, the photograph is overtly prejudicial. Despite the fact that defendant was not charged with Dawson's death, the photograph showed Dawson's lifeless body hanging outside the driver's side window of the automobile. Although the photograph showed the back of Dawson's head and did not show her face or the extent of her injuries, it nevertheless depicted a bloodstained door beneath her limp body, as well as blood that dripped down onto the snow-covered ground. Further, Dawson's body was in the foreground of the photograph, and the vehicles were in the background. Under these circumstances, we conclude that the photograph injected considerations extraneous to the merits of the lawsuit, namely sympathy for Dawson or shock at seeing her lifeless body. Therefore, the circuit court appropriately ruled that the admission of the photograph was unfairly prejudicial. See *McGhee*, 268 Mich App at 614.

Further, as part of an MRE 403 analysis, we consider, among other factors, "whether the fact can be proved in another manner without as many harmful collateral effects." *Blackston*, 481 Mich at 462. The prosecutor argues that People's Exhibit 9 was offered to show the damage done to Dawson's automobile and the extent of the crash. The record reveals that several other photographs – People's Exhibits 6, 7, 8, 10, 11, and 14 – were admitted for this very purpose; none of those photographs showed Dawson's lifeless body. Moreover, these photographs depicted the extent of the damage done to Dawson's automobile in a clearer and more effective manner than did People's Exhibit 9. Therefore, the fact to be established by People's Exhibit 9 could have been and was proved in another manner that did not have as many harmful collateral effects as People's Exhibit 9 did. The circuit court properly determined that People's Exhibit 9 should have been excluded under MRE 403. See *Blackston*, 481 Mich at 462. Indeed, "[p]hotographs are admissible if they are substantially necessary or instructive to show material facts or conditions." *Anderson*, 209 Mich App at 536. Here, a photograph of Dawson's lifeless body was neither substantially necessary nor instructive to show material facts or conditions.

We also conclude that the erroneous admission of People's Exhibit 9 was outcome determinative. "A preserved error in the admission of evidence does not warrant reversal unless after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative." *People v Burns*, 494 Mich 104, 110; 832 NW2d 738 (2013) (internal quotation marks and citation omitted). In analyzing whether it was more probable than not that the error was outcome determinative, a reviewing court is to focus on the nature of the error, and the error's effect in light of the weight and strength of the untainted evidence. *Lukity*, 460 Mich at 495.

Here, it was more probable than not that the admission of People's Exhibit 9 affected the outcome because the photograph was overtly prejudicial, and because the evidence against defendant was contradictory. The prosecution's theory of guilt was that defendant drove in a willful or wanton manner because he drove with excessive speed on slippery roads. However, defendant testified that his northbound travel was clear, and he suddenly came upon these snow

and ice conditions.<sup>3</sup> Evidence of defendant's speed was somewhat unclear at trial because different experts calculated defendant's speed at anywhere from 55 to 68 mph. Moreover, People's Exhibit 9 was overtly prejudicial. Although defendant was not charged with causing Dawson's death, this photograph prominently featured Dawson's lifeless body, surrounded by blood. Consequently, we conclude that it was more probable than not that the admission of People's Exhibit 9 was outcome determinative. See *Burns*, 494 Mich at 110; *Lukity*, 460 Mich at 495-496; *People v Falkner*, 389 Mich 682, 685-686; 209 NW2d 193 (1973) (holding that "it was reversible error" to admit into evidence photographs that were only designed to excite passion and prejudice).<sup>4</sup>

In reaching this conclusion, we note that at the close of proofs, the district court instructed the jury that it was not to let sympathy or prejudice affect its decision. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Here, the instruction was not given contemporaneously with the admission of People's Exhibit 9. Also, jury instructions, while generally effective, have been found ineffective where the damage done was irreparable. *People v Messenger*, 221 Mich App 171, 179 n 3; 561 NW2d 463 (1997). We conclude that a general instruction that the jury was not to let sympathy or prejudice affect its verdict, which was not given contemporaneously with the admission of an overtly prejudicial photograph, was insufficient to cure the prejudice caused by People's Exhibit 9. Indeed, in a case where the evidence against defendant was contradictory, a general instruction was insufficient to counteract the prejudice caused by People's Exhibit 9. See *id.*

Affirmed.

/s/ Michael J. Kelly  
/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood

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<sup>3</sup> The prosecutor did not present proofs that emergency personnel traveled the same route as defendant and disputed his allegations.

<sup>4</sup> We note that the prosecutor argues that defense counsel utilized this photograph to argue that Dawson did not use her seatbelt and made it a prominent point of the defense. However, defense counsel noted at oral argument in the circuit court that he only mentioned the photograph as demonstrating the lack of a seatbelt because of the trial court's ruling allowing admission. Indeed, in closing argument, defense counsel argued the significance of the photograph regarding the lack of a seatbelt, but did not present it to the jury.